

APPENDIX A.1
EMC 19.38
NONCONFORMING STRUCTURES, USES AND LOTS

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38.010 Purpose.

The purpose of this chapter is to regulate nonconforming structures, uses and lots. (Ord. 2095-95 § 1, 1995: Ord. 1671-89 (part), 1989.)

38.020 Abatement of illegal uses, structures or lots.

Any use, structure or lot which did not comply with the zoning code requirements at the time it was established or constructed and does not comply with the current zoning code is illegal and shall be brought into compliance with the provisions of the zoning code. (Ord. 2095-95 § 2, 1995: Ord. 1671-89 (part), 1989.)

38.030 Nonconforming use.

A. Continuation. A nonconforming use is transferable to a new owner or tenant; provided, that the use is not expanded or discontinued as provided in subsection B of this section and may continue and need not be brought into conformance with this chapter unless a specific provision of the zoning code otherwise requires conformance (see the sections of the zoning code concerning nonconforming adult use business in Chapter 39 of the zoning code, nonconforming signs in Chapter 36 of the zoning code, and nonconforming landscaping in Chapter 35 of the zoning code).

B. Discontinuation. Except as provided in Section [38.100](#) (Nonconforming grocery stores in residential zones), any use which is nonconforming and has ceased for a period of two or more years shall lose such nonconforming status. All subsequent use of the property or building shall be a use which conforms with the requirements of the zoning code.

C. Change. A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the nonconforming use has not been discontinued for a period of more than two years. The new use shall be approved using the review process described in EMC Title [15](#), Local Project Review Procedures, and the evaluation criteria required for the expansion of nonconforming uses listed in Section [38.090](#).

D. Expansion. A nonconforming use may be expanded up to twenty-five percent in building area, land area and/or parking area using the review process described in EMC Title [15](#), Local Project Review Procedures, and the evaluation criteria in Section [38.090](#). A nonconforming use may be expanded over twenty-five percent in building area, land area and/or parking area if approved using the review process described in EMC Title [15](#), Local Project Review Procedures, and

the evaluation criteria of Section [38.090](#). Under no circumstances shall the expansion result in the following:

1. Increasing the number of dwelling units further above the maximum allowed by the zoning code; or
2. Decreasing the number of off-street parking spaces further below the minimum required by the zoning code.

E. Damage or Destruction.

1. If a structure housing a nonconforming use is destroyed to any extent by fire or other casualty not intentionally caused by the owner, the structure may be rebuilt and the use may be re-established if the following requirements are met:

- a. The nonconformity is certified by the planning department;
- b. A complete building permit application is filed within one year of such fire or other casualty; and
- c. Construction is commenced and completed in conformance with the provisions of the building code then in effect. This provision shall not reduce any requirements of the building or fire codes in effect when such structure is rebuilt.

2. Exception. A nonresidential nonconforming use located in a residential zone which is damaged beyond fifty percent of its value, as determined by the building official, shall lose its nonconforming status and shall not be allowed to be rebuilt. (Ord. 2538-01 §§ 58, 59, 2001; Ord. 2095-95 § 3, 1995; Ord. 1671-89 (part), 1989.)

38.040 Nonconforming structures.

A. Alteration or Expansion.

1. Additions, maintenance or repair to a nonconforming structure which does not increase the nonconformity shall be permitted; provided the addition, maintenance or repair complies with building and zoning code requirements.

2. A nonconforming structure which does not meet required setbacks or height may be expanded along the nonconforming setbacks or to the existing nonconforming height if approved by the planning director using the review process described in EMC Title [15](#), Local Project Review Procedures; provided, that the expansion does not make the setback or height more nonconforming; that the expansion complies with all other requirements of this chapter; and that the nonconformity has been certified by the planning department.

B. Damage or Destruction.

1. If a nonconforming structure is destroyed or damaged to any extent by fire or other casualty not intentionally caused by the owner, the structure may be rebuilt if the following requirements are met:

- a. The nonconformity of the structure is certified;
- b. A complete building permit application is properly filed within one year of such fire or other casualty; and
- c. Construction is commenced and completed in conformance with the provisions of the building code then in effect. This provision shall not reduce any requirements of the building or fire codes in effect when such structure is rebuilt.

2. If a nonconforming structure which has no permanent foundation is destroyed and the foundation's location cannot be verified by the planning department, then any new construction shall comply with the requirements of the zoning code.

C. Demolition of Nonconforming Structures. Following the abatement or voluntary demolition of a nonconforming structure, any new construction shall be in conformance with the zoning code, except in the following circumstances:

1. A single-family dwelling which is nonconforming in setbacks or lot coverage may be voluntarily removed or demolished and replaced by a new single-family dwelling which has the same nonconforming setbacks or lot coverage as the prior nonconforming dwelling; provided, that the nonconformity is not increased,

that the new dwelling meets all current building code requirements, and that the nonconformity of the dwelling is certified by the planning department.

2. A detached accessory structure which is accessory to a single-family dwelling or duplex that has nonconforming setbacks may be demolished and a new accessory structure may be built in the same location; provided, that the new accessory structure does not exceed fifteen feet in height, or the height at which the structure was certified above fifteen feet, meets current building code requirements, and that the location of the nonconforming accessory structure is certified by the planning department. (Ord. 2657-02 § 44, 2002; Ord. 2538-01 § 60, 2001; Ord. 2095-95 § 4, 1995; Ord. 2065-95 § 1, 1995; Ord. 1671-89 (part), 1989.)

38.050 Historic buildings.

See Section [33.090](#) of the zoning code. (Ord. 2095-95 § 5, 1995; Ord. 1849-92 §§ 41, 42, 1992; Ord. 1671-89 (part), 1989.)

38.060 Nonconforming parking.

If a use which was lawfully established has less parking than required by the zoning code, it need not provide additional parking except under the following circumstances:

A. Expansion of Building. Any increase in the floor area of the building shall provide additional parking for the added floor area in accordance with the current parking requirements for such use.

B. Change of Use. Any change in a use which requires more parking than the previous use shall provide parking in accordance with the current parking requirements for the changed use minus the number of parking spaces by which the previous use was deficient.

C. B-3 Zone. For regulations concerning nonconforming parking in the B-3 zone, see Section [22.020](#).E of the zoning code. (Ord. 2095-95 § 6, 1995; Ord. 1671-89 (part), 1989.)

38.070 Nonconforming open space and landscaping.

Uses which were lawfully established which do not conform to the open space or landscaping requirements need not provide additional open space or landscaping except under the following circumstances:

A. Expansion of Structure.

1. Where an expansion of a structure is proposed, landscaping within the required setback for the addition in accordance with the requirements of Chapter 35 of the zoning code. (See Section [35.030](#).B when the value of the expansion is equal to or greater than thirty-five percent of the assessed value of the existing structure.)

2. Where an increase in the number of dwelling units for a multiple-family development is proposed, open space shall be provided in accordance with the open space requirements of Chapter 15 of the zoning code, minus the amount of open space by which the previous multiple-family development was deficient.

B. Change of Use. If the use of the property changes to a use which requires greater amounts of landscaping than the former use provided, the new use shall provide landscaping in accordance with the requirements of Chapter 35 of the zoning code.

C. Parking Lot Landscaping. Existing unpaved parking lots which are paved shall provide the landscaping required by Section [35.080](#) of the zoning code; provided, that the planning director shall have the discretion to reduce or modify the landscaping requirements if the required landscaping will reduce parking below the minimum required by this title. (Ord. 2095-95 § 7, 1995; Ord. 1849-92 § 43, 1992; Ord. 1671-89 (part), 1989.)

38.080 Nonconforming lots.

A. Substandard Lots — Merger Clause. The following applies only to lots in the R-S zone existing prior to March 20, 1962, and to lots in the R-1, R-2, R-3 or R-4 zones existing prior to December 1, 1956:

1. Any lot which does not meet the minimum lot area or width requirements of the zone in which it is located, and which was conveyed and held as a separate lot in separate ownership as of the above dates and has not been subsequently merged with contiguous lots in accordance with subdivision 2 or 3 of this subsection is a substandard lot.

Any such substandard lot may be used for the creation of one single-family detached residential dwelling and its accessory building provided all yard requirements of the appropriate zone are met.

2. If two or more substandard lots or a combination of lots or substandard lots and portion(s) of lots and substandard lots are contiguous and were acquired by common conveyance prior to the above dates, or which have been legally combined at any time subsequent to the above dates, and if all or part of the lots do not meet the requirements established for minimum lot area and width, the lands involved shall be merged and considered to be a single undivided parcel. No portion of the parcel shall be used, altered or sold in a manner which diminishes compliance with lot area and width requirements, nor shall any division of any such parcel be made which creates a lot with a width or area below the requirements permitted by this chapter, except as provided by subsection A4 of this section.

3. If two or more substandard lots or a combination of lots or substandard lots and portions of lots or substandard lots are contiguous and a structure is constructed on or across the lot line(s) which make the lots contiguous, then the lands involved shall be merged and considered to be a single undivided parcel. No portion of said parcel shall be used, altered or sold in any manner which diminishes compliance with lot area and width requirements, nor shall any division be made which creates a lot with a width or area below the requirements permitted by this title.

For purposes of this section, "structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground and includes, but is not limited to, houses, garages, carports and accessory structures.

4. When a lot which contains less than the minimum lot area and/or width requirements of this title is located within an area in which there is a predominance of other lots which do not meet the minimum lot area or width requirements of this title, the owner of such lot may request certification of the lot as a legal building lot, and the city shall certify the lot as a legal building lot if all of the following circumstances apply:

a. The subject lot has a lot area and lot width equal to or greater than at least thirty-five percent of the lots located within a three-hundred-foot radius of the boundaries of the subject lot;

b. The subject lot has at least eighty percent of the minimum lot area required by this title;

c. After required setbacks are accounted for, the lot has a building area in which a rectangle having minimum dimensions of thirty feet by forty feet can be located; and

d. All other requirements of this title can be met by the proposed building or use, without obtaining variances.

B. Nonconforming Lot Certification. Lots which qualify as substandard lots, as provided by subsection 38.080A1 must be certified as a nonconforming lot prior to the issuance of a building permit. In order to be certified as a legal lot for building purposes, the applicant shall provide sufficient information to verify that

the lot was legally created and that all applicable city zoning code requirements in effect at the time the lot was created were met, or that the lot was created prior to annexation to the city and met the minimum zoning code requirements of Snohomish County at the time the lot was established.

C. Lots Made Nonconforming by Public Acquisition — Other Nonconforming Lots.

1. Any lot which does not conform to the minimum lot area or minimum lot dimension requirements of this title as a result of a portion of such lot being acquired by a government agency for a public use or purpose, or any lot which does not conform to a minimum lot area or minimum lot dimension requirements of this title which is not subject to the requirements of subsection A of this section shall be permitted with:

a. Single-family zones — a single-family dwelling;

b. Multiple-family zones — a single-family dwelling, or as many dwellings that the density standard of the zone in which the property is located will permit, provided, that all development standards of this title applicable to the number of dwellings proposed are met, and that no variances to the development standards of this title can be approved to accommodate more than a single-family dwelling on the lot;

c. Commercial and industrial zones — any use permitted by the zone in which the property is located.

2. All uses of such lots shall meet the following requirements:

a. The resultant area of the lot shall be at least one-half the minimum lot area required by the zone in which it is located, or five thousand square feet, whichever is greater. Lots which do not meet the minimum area requirement of this section may be considered for the uses provided by subsection C.1 of this section using the review process described in EMC Title [15](#), Local Project Review Procedures, and the general evaluation criteria listed in Section [41.150.C](#) of this title.

b. After required setbacks are accounted for, the lot shall have a building area in which a rectangle having minimum dimensions of thirty feet by forty feet can be located. Lots which do not meet this building area requirement may be considered for the uses provided by subsection C.1 of this section using the review process described in EMC Title [15](#), Local Project Review Procedures, and the general evaluation criteria listed in Section [41.150.C](#) of this title.

c. All such lots must be certified as nonconforming as required by Section [38.080.B](#).

d. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.

e. All other requirements of this title. (Ord. 2538-01 § 61, 2001; Ord. 1849-92 §§ 44—46, 1992; Ord. 1793-91 § 6, 1991; Ord. 1729-90 § 27, 1990; Ord. 1671-89 (part), 1989.)

38.090 Expansion of nonconforming use or building.

A. Where this chapter provides for the change of a nonconforming use or the expansion of a nonconforming use or building, the following evaluation criteria shall be considered in the evaluation of such proposal:

1. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety, and the proposal's ability to mitigate potential impacts.

2. The site has sufficient area to provide for off-street parking, landscaping and screening from adjacent uses.

3. Provides a service to the general area.

4. The adequacy of streets, utilities and public services to accommodate the proposed use.

5. Compatibility of the proposed use or building to surrounding properties, especially as it relates to size, height, location and setback of buildings.

6. The number, size and location of signs and lighting, especially as they relate to more sensitive land uses.

7. The landscaping, buffering and screening of parking, loading and storage areas.

8. The generation of nuisance irritants such as noise, smoke, odor, glare, visual blight or other undesirable environmental impacts.

9. Consistency with the goals and policies of the Everett general plan and the purpose of the zone in which it is located.

10. Consistency with the environmental policies as stipulated in the city's SEPA ordinance.

11. Compliance with other provisions of this title, other city, state and federal regulations. (Ord. 2095-95 § 8, 1995: Ord. 2065-95 § 2, 1995: Ord. 1671-89 (part), 1989.)

38.100 Nonconforming grocery stores in residential zones.

Nonconforming grocery stores containing not more than five thousand square feet gross floor area shall be subject to the provisions of this section regarding discontinuation, re-establishment and damage or destruction.

A. Discontinuation. A nonconforming grocery store located in a residential zone which has ceased to operate for a period of three years or more shall lose its nonconforming status and all subsequent use of such property shall be a use which conforms with the requirements of the zoning code, except as provided in subsections B and C of this section.

B. Re-establishment—Change to Another Nonconforming Use.

1. Re-establishment. A nonconforming grocery store which has lost its nonconforming status may be re-established; provided, that application to re-establish such use is made to the planning department not later than five years after the use has ceased to operate. An application to re-establish the use shall be subject to the review process described in EMC Title [15](#), Local Project Review Procedures. Any such nonconforming grocery store which is permitted to be re-established shall be limited to retail sales of groceries and related items. Sale of gasoline or other vehicle fuels will not be permitted.

2. Change to Another Nonconforming Use. A nonconforming grocery store may be changed to another neighborhood oriented business using Review Process I and the evaluation criteria that apply to expansion of nonconforming uses contained in Section [38.090](#).

C. Damage or Destruction. Nonconforming grocery stores located in residential zones which are destroyed to any extent by fire or other casualty not caused by the owner intentionally may be rebuilt; provided, that the gross floor area of the structure and exterior dimensions of the structure shall not exceed the same dimensions or standards of the previous structure. The provisions of this section shall only be available if an application for building permit is filed within five years of such fire or other casualty. All new construction shall comply with the provisions of the building code then in effect. (Ord. 2538-01 § 62, 2001; Ord. 2095-95 § 9, 1995: Ord. 1671-89 (part), 1989.)